IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

CRL.A.No. 1508 of 2006()

AGAINST THE JUDGMENT IN CC.64/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ALATHUR

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APPELLANT: COMPLAINANT

REV. K.V.MATHAI,AGED 65,
S/O.LATE K.C.VARKEY,
RESIDING AT KAVANAKUDIYIL HOUSE,
KALAMKULAM,VADAKKANCHERRY P.O.,
PALAKKAD DISTRICT.

BY ADVS. M/S. .MANJU ANTONEY -& T.J.THOMAS

RESPONDENTS: ACCUSED & STATE

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1. P.V.JOSE,AGED ABOUT 40,
PROPRIETOR,P.B.S. TRADERS, RESIDING AT
POOVAKKULAM HOUSE,KORANCHIRA,
KOTTEKULAM,ALATHUR,
PALAKKAD DISTRICT.

2. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY TO
GOVERNMENT THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM.

BY ADVS. SRI.JOHNSON P.JOHN -R1
SRI.RAJU SEBASTIAN VADAKKEKKARA
SRI.BABY MATHEW
PUBLIC PROSECUTOR SRI. P.RAVINDRA BABU -R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 1508 OF 2006

Dated this the 12th day of March, 2007

JUDGMENT

This appeal is filed by the complainant in C.C.No.64 of 2005 on the file of the Judicial First Class Magistrate's Court, Alathur. The allegation in the complaint was that the first respondent - accused committed offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. As per the complaint, Ext.P1 cheque for a sum of Rs.56,240/- issued by the first respondent in favour of the appellant towards purchase of rubber when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the first respondent. After complying with the statutory provisions, the appellant filed the complaint. To prove the case against the first respondent, the appellant himself was examined as PW.1 and Exts.P1 to P8 were produced. No oral or documentary evidence was adduced on the side of the defence. After closing the evidence of the complainant, the first respondent was questioned under Section 313 Cr.P.C. Denying the allegations levelled

against him, the first respondent stated that the Sub Inspector of Police, Vadakkancherry had obtained from him by coercion a signed blank cheque and that no amount was due from him to the appellant. No evidence was adduced by the first respondent to substantiate his case. However, considering the entire facts and circumstances of the case, the court below acquitted the first respondent - accused on the ground that the appellant-complainant failed to prove the case against the accused.

3. This Court heard counsel on either side. On perusing the entire records and appreciating the evidence, this Court is of the view that the court below went wrong in acquitting the accused. The judgment of the trial court is not based on any evidence and the liability of the first respondent is clearly established by the appellant by adducing convincing evidence. Hence, the impugned judgment is set aside.

4. Counsel on either side now submits that the matter can be settled out of Court and for that purpose, they seek to post the case before the Lok Adalat.

The Crl. Appeal is accordingly allowed. In the light of the submission made by counsel on either side, the case shall be posted before

the Lok Adalat during the next sitting. It is made clear that if the matter is not settled in the Lok Adalat, punishment shall be imposed on the first respondent - accused as per law.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL. APPEAL NO. 1508 OF 2006

Dated this the 13th day of September,, 2007

O R D E R

By the judgment dated 12.3.2007, this Court found the first respondent - accused guilty under Section 138 of the Negotiable Instruments Act, 1881. At that time, it was suggested at the bar that the matter will be settled out of Court. Hence, this Court referred the matter to the Lok Adalat. It was also made clear that if the matter was not settled, punishment shall be imposed on the first respondent. Today, the case has come up before this Court for orders as the parties were not willing to compound the matter.

2. Heard. As this Court has already found the first respondent - accused guilty under Section 138 of the Negotiable Instruments Act, he is convicted thereunder and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.1,500/- and in default of payment of fine, to undergo simple imprisonment for a further period of 15 days. The

first respondent is also directed to pay an amount of Rs.57,000/- to the appellant - complainant as compensation and in default of payment of the compensation, the first respondent shall undergo simple imprisonment for a further period of six months. The first respondent - accused shall appear before the court below on 25.9.2007 to receive the sentence.

This order shall form part of the judgment dated 12.3.2007 in Crl. Appeal No.1508 of 2006.

(K.THANKAPPAN, JUDGE)

sp/